IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Rajasthan State Agriculture Marketing Board & Others
Vs. Gulab Chand Mittal & Another
(D.B. Civil Special Appeal (Writ) No.1003/1997)

2. Rajendra Bahadur Bhandari Vs.
Rajasthan State Agriculture Marketing Board & Others
(D.B. Civil Special Appeal (Writ) No.1105/1997)

D. B. Civil Special Appeals under Ordinance 18 of the Rajasthan High Court Ordinance,1948 against the judgment dated 3-7-1997 of learned Single Judge in SB Civil Writ Petition No.3967/1995.

Date of Judgment: September 27, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Mahendra Singh, for the appellant Board.

Mr. Gulab Chand Mittal, respondent present in person.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Core questions emerge for consideration in these appeals are:-

(i) Whether the decision to abolish post of Law and Enquiry Officer was taken in good faith by the Administrator?

(ii) Whether the powers of judicial review were rightly exercised by the learned Single Judge?

2. Contextual facts depict that the respondent Gulab Chand Mittal who possessed the degree of LLB was serving on the post of Statistical

Officer w.e.f. June 25, 1983 in the Rajasthan State Agriculture Marketing Board (for short `the Board'). A post of Law and Enquiry Officer (for short `LEO') was created in the pay scale of Rs.2650-4500 vide order dated September 3, 1994 in pursuance of the Resolution No.48 of the Board. Because no work was available, the post of Statistical Officer was abolished and post of LEO was created. The respondent was found suitable for the post of LEO and selected vide order dated September 6, 1994. It appears that prior to creation of the post of LEO, the functions related to Law and Enquiry were being looked after by Head Legal Assistant appointed on deputation basis. Thereafter on July 4, 1995 Finance Department, Government of Rajasthan issued a circular for effecting cut in Government Expenditure and in compliance of the circular the Board vide order dated August 4, 1995 decided to abolish 255 posts of various categories including the post of LEO held by the respondent. The said order of abolition of post of LEO was challenged by the respondent before the learned Single Judge by filing the writ petition. Learned Single Judge allowed the writ petition vide order dated July 3, 1997 holding that the Administrator of the Board had not acted bonafidy in ordering abolition of the post of LEO. It is against the judgment dated July 3, 1997 that the instant appeals have been preferred.

3. It is contended by learned counsel for the appellant Board that in furtherance of the policy decision taken for reduction of expenditure, various posts were abolished. Since creation and abolition of post is a prerogative of the Executive, the policy decision could not have been the subject matter of judicial review. Reliance was placed on All India ITDC Workers Union Vs. ITDC (2006)10 SCC 66, wherein two Judge Bench of the Apex Court indicated that government employees have no absolute right

under Articles 14, 21 and 311 of the Constitution of India and Government can abolish the post. Reliance was also placed on Avas Vikas Sansthan Vs. Avas Vikas Sansthan Engineers Association (2006)4 SCC 132, wherein two Judge Bench of the Apex Court held that power to abolish any civil post is inherent in every sovereign Government and such abolition will not entail any right on the person holding the abolished post.

4. The nature of scope of powers to abolish a post has been the subject matter of several judicial pronouncements. The Supreme Court in N.Ramanatha Pillai Vs. The State of Kerala (AIR 1973 SC 264) indicated thus:-

> "A post may be abolished in good faith. The order abolishing the post may lose its effective character, if it is established to have been made arbitrarily, malafide or as a mask of some penal action..."

5. In K. Rajendran Vs. State of Tamil Nadu (1982)2 SCC 273, three Judge Bench of the Apex Court observed that whether or not a post should be retained or abolished is essentially a matter of policy decision. But the decision should be taken in good faith and the action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. Any action, legislative or executive, taken pursuant to the power to abolish a post is always subject to judicial review.

6. H. Eliot Kaplan in his book "The Law of Civil Services" described "Good Faith in Abolition of Positions at Page 214 thus:-

> "8. `Good Faith' in Abolition of Positions. There, of course is no vested right to employment in the public service. The notion, much too prevalent that any one who has been appointed after a

> competitive examination is entitled to be retained in the service is erroneous. Where there is any reasonable justification for eliminating positions in the public service, even where such abolition of positions may be subject to judicial review, the inclination of the courts is not to interfere, avoiding substitution of judicial wisdom or judgment for that of the administrator.
> A post is not lawfully abolished solely because it has been left vacant for a short period of time and subsequently filled by another appointee than the one laid off and entitled to re-employment.
> `Good faith of a head of department in abolishing a position on alleged grounds of economy has often been challenged. Most courts have held that the issue of good faith on the part of an administrative official is one of law solely for the court to pass on, and not an issue of fact which may be submitted to a jury for determination. The jury may determine the facts, which the court in turn may find as a matter of law constitute bad faith; but a verdict by a jury that a department head had acted in bad faith in abolishing a position was set aside as a conclusion of law and not properly finding of fact. What constitutes bad faith as a matter of law in abolishing positions must be determined by the precise facts in each case. As a general rule, where positions are purported to be eliminated and incumbents laid off, and thereafter identical or similar positions are re-established and the positions filled by others not entitled under the civil service law and rules to such employments, the courts will not hesitate to order re-employment of the laid-off employees."

7. Their Lordships of the Supreme Court in State of Haryana Vs. Des Raj (1976(1) SLR 191) held that whether a post should retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post

was only a device to terminate the service of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside.

8. In order to adjudge as to whether the post of LEO was abolished by the Administrator in pursuance of the policy decision taken by the State Government for curtailing the department expenditure, we will have to scan the scheme of the Rajasthan Agricultural Produce Market Act,1961 (for short `Act'). The Act was enacted for better regulation of buying and selling of agricultural produce and for the establishment of markets therefor in the State of Rajasthan. There is definite public purpose behind the Act. The whole object of the Act is the supervision and control of the transactions of purchase by the traders from the agriculturists in order to prevent exploitation of the later by the former.

9. Chapter IV-A was inserted in the Act on July 14, 1973. As per Section 22-A of this Chapter the Board has to be a body corporate having perpetual succession and a common seal. The Board according to Section 22-B, consists of the following members:-

> (a) Ten members elected by the Chairman of the market committees in the State from amongst themselves. For this purpose the State shall be divided into 10 single member constituencies in the prescribed manner and one member shall be elected from each constituency;
> (b) Two traders elected by the trader members of the market committees in the State of Rajasthan in the prescribed manner: Provided that if a trader is a Chairman of any market committee, he may choose to seek election from either of the two constituencies;
> (c) Secretary to the Government in the department of Agriculture and Animal Husbandry for the State of Rajasthan;
> (d) Director of Agriculture for the State of Rajasthan;

(e) Director of Animal Husbandry for the State of Rajasthan;
(f) Registrar, Co-operative Societies for the State of Rajasthan;
(g) Director of Sheep and Wool for the State of Rajasthan;
(h) One Economist drawn from any University established in State of Rajasthan to be nominated by the Government;
(i) An Officer of the Agriculture Department, nominated by the Government shall be the ex-officio member-secretary of the Board;
(j) Two non-official members of the public nominated by the Government;
(k) Food Commissioner for the State of Rajasthan or his nominee;
(l) Managing Director, Rajasthan State Warehousing Corporation;
(m) Regional Manager, Food Corporation of India;
(n) The Director of Agricultural Marketing for the State of Rajasthan.

The Chairman and Vice-Chairman of the Board shall be appointed by the Government from amongst the members of the Board provided that a member elected under sub-section 1(b) shall not be appointed as the Chairman or Vice-Chairman of the Board and provided further that if a Chairman of a Market Committee is appointed as the Chairman or Vice-Chairman of the Board and he consents to such appointment, he shall be deemed to have relinquished charge of the office of the Chairman of the Market Committee in favour of the Vice-Chairman of the Market Committee from the date he assumes charge of the office of the Chairman or Vice-Chairman of the Board.

10. The State Government in the public interest may terminate the term of the Board and appoint an Administrator to exercise the powers of the Board, under Second Proviso to Section 22-FFF of the Act which reads as under:-

> "Provided further that the State Government, if it thinks fit in public interest so to do, may at any time, by a notification in the official Gazette terminate the term of the Board Constituted under this section and appoint and Administrator to exercise all the powers and perform all the duties and functions of the Board."

11. Section 22-H of the Act which provides for marketing development

fund reads as under:-

> "22-H. Marketing Development Fund. (1) There shall be a fund called the Marketing Development Fund, which shall be administered by the Board.
> (2) All receipts of the Board shall be credited, and all expenditure incurred by the Board in the discharge of its duties shall be debited to the Marketing Development Fund."

12. Sections 22-I and 22-J of the Act that relate to Marketing Development Fund read thus:-

> "22.-I. Sums of money to be credited to the Marketing Development Fund and investment of the surplus. (1) The following sums of money shall be credited to the Marketing Development Fund:-
>
> (i) Any grants or loans sanctioned by Government;
>
> (ii) Contributions received from market committees under section 18-A;
>
> (ii) Loans raised by the Board with the approval of the Government;
>
> (iv) Such other sums of money as the Government may direct.
>
> (2) All expenditure incurred by the board shall be defrayed out of the said fund and the surplus funds shall be invested in such manner as may be prescribed."

> "22-J Purposes for which the Marketing Development Fund shall be utilised.- The Marketing Development Fund shall be utilised by the Board for the following purposes, namely:-
> (i) Improvement and regulation of Agricultural Markets in the State;
> (ii) Giving of aid to financially weak market committees in the State in the form of loans and grants to enable them to discharge their duties and functions satisfactorily;
> (iii) Payment of the salaries, allowances, pensions, gratuities, compassionate grants to its employees and contributions towards salaries, allowances, pension and gratuity of the

Government employees, if any, serving to the Board. All expenditure under this clause shall be the first charge on Marketing Development Fund;
(iv) Payment of travelling and other allowances to the members of the Board in the manner prescribed;
(v) Undertaking, education and publicity in relation to matters connected with regulated Marketing of Agricultural Produce in the State;
(vi) Meeting of legal expenses;
(vii) Provision of technical and administrative assistance to market committees including maintenance of staff for rendering assistance to market committees for such purposes as:
(a) Engineering;
(b) Auditing of accounts of market committees;
(viii) Training of officers and staff of the market committees and organisation of camps, workshops, seminars and conferences;
(ix) Grading and standardisation of agricultural produce;
(x) Construction of market roads and approach roads to the markets;
(xi) Construction of market yards and sub-yards and leasing or transferring these to the market committees;
(xii) Sanction of loans and advances to its employees in the manner prescribed;
(xiii) Establishment and maintenance of the offices of the Board;
(xiv) Expenditure on audit of the accounts of the Board; and
(xv) With the prior approval of the Government any other purpose connected with agricultural marketing."

(Emphasis Supplied)

13. Their Lordships of the Supreme Court in Kewalkishan Puri V. State of Punjab (AIR 1980 SC 1008) indicated that the Marketing Development Fund is constituted primarily and mainly out of the contribution by the Market Committees from realisation of market fees. It can be expended for purposes of the market in the notified area in relation to the transaction of the sale and purchase of agricultural produce and for no

other general purpose or in the general interest of the agricultural or the agriculturists. On that basis we may as at presently advised to hold as valid the purposes mentioned in S.22-J except clause (v) and (xv) of that section. At the same time we hold the marketing development fund constituted out of the market fee cannot be expended for the purposes mentioned in clause (v) and (xv) in S.22-J of the Act. We do not propose to strike down these provisions as being constitutionally invalid as the purpose of law will be served by restricting the operation of the section in the manner we have indicated.

14. Evidently payment of the salary to the LEO was to be made from Marketing Development Fund as mandated by Section 22-J of the Act, the Administrator could not have curtailed the department expenditure in the garb of policy decision of the State Government. The Administrator had to perform all the duties and functions of the Board, since he was appointed in the public interest under second proviso to Section 22-FFF of the Act. The Administrator could not have flouted the mandate of the Act.

15. We also notice from the record that except the post of LEO, all other posts abolished by the Administrator were lying vacant. On consideration of entire material placed before us we are of the opinion that abolition of post of LEO was only a device to terminate the services of the respondent and the abolition suffers from serious infirmity. Since the order abolishing the post of LEO was malafide it had lost its effective character and learned Single Judge rightly exercised the power of judicial review in setting aside the said order.

16. For these reasons, we find no merit in the instant appeals and

the same accordingly stand dismissed with costs.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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